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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

WILLIAM HERESNIAK, on behalf of
himself and all others similarly situated,

Plaintiff,

vs.

**ELON R. MUSK, X HOLDINGS I, INC., X
HOLDING II, INC., and TWITTER, INC.,**

Defendants,

Case No.: **3:22-CV-03074-CRB**

**STIPULATION AND [PROPOSED]
ORDER TO STAY ACTION**

Judge: Hon. Charles R. Breyer
Courtroom: 6, 17th Floor

1 WHEREAS, on July 1, 2022, Plaintiff filed his First Amended Complaint asserting
2 claims for aiding and abetting breach of fiduciary duty, declaratory relief, and unjust enrichment
3 arising out of the proposed buyout, contemplated by the April 25, 2022 Merger Agreement, of
4 Defendant Twitter, Inc. (“Twitter”) by Defendant Elon Musk. Dkt. 7.

5 WHEREAS, on August 10, 2022, Plaintiff served Requests for Production of Documents
6 on all Defendants. Defendants’ responses to the Requests for Production of Documents are due
7 on October 10, 2022.

8 WHEREAS, on September 9, 2022, Defendants Elon Musk, X Holdings I, Inc., and X
9 Holdings II, Inc. (the “Musk Defendants”) filed Motions to Dismiss the First Amended
10 Complaint and Stay Discovery. Dkt. 38, 39. On September 9, 2022, Defendant Twitter Inc.,
11 filed a Motion to Dismiss Under Rules 12(B)(1) and 12(B)(6), or in the alternative, Motion to
12 Dismiss for *Forum Non Conveniens* or Transfer Under 28 U.S.C. § 1404(A). Dkt. 41. Plaintiff’s
13 oppositions to the three motions to dismiss are due on October 11, 2022. Dkt. 20. Defendants’
14 replies in support of the Motions to Dismiss are due on November 10, 2022. Dkt. 20. The
15 hearing on the Motions to Dismiss is scheduled for December 2, 2022. Dkt. 38, 39, 41.

16 WHEREAS, on September 16, 2022, Twitter filed a Joinder in the Musk Defendants’
17 Motions to Stay Discovery with respect to the request that the Court stay discovery pending the
18 final resolution of *Twitter, Inc. v. Elon R. Musk et al.*, C.A. No. 2022-0613 (Del. Ch.) (the
19 “Twitter Delaware Action”) and *Luigi Crispo v. Elon R. Musk et al.*, C.A. No. 2022-0666 (Del.
20 Ch.) (the “Stockholder Delaware Action), or alternatively, pending a decision on Defendants’
21 motions to dismiss. Dkt. 46.

22 WHEREAS, on September 20, 2022, the Court adopted the Joint Case Management
23 Statement, setting certain deadlines and scheduling a Case Management Conference for February
24 3, 2023, at 8:30 a.m. Dkt. 48.

25 WHEREAS, on September 26, 2022, Defendants Elon Musk, X Holdings I, Inc., and X
26 Holdings II, Inc. filed a Notice of Pendency of Other Actions. Dkt. 49. Responses, if any, are
27 due by October 10, 2022. *See* Civil L.R. 3-13.

1 WHEREAS, on September 29, 2022, Plaintiff served Plaintiff's First Set of Special
2 Interrogatories to Twitter;

3 WHEREAS, on October 6, 2022, the Musk Defendants filed a motion to stay the Twitter
4 Delaware Action and Chancellor McCormick of the Delaware Court of Chancery stayed the
5 Twitter Delaware Action until October 28, 2022, to permit the parties to close on the transaction
6 contemplated by the April 25, 2022 Merger Agreement;

7 WHEREAS, given the potential impact of these events on this litigation, the parties have
8 agreed to temporarily stay this case and certain deadlines as set forth below.

9 NOW, THEREFORE, it is hereby stipulated by and between the undersigned that:

10 1. The case shall be stayed until November 4, 2022.

11 2. All deadlines relating to discovery, including Plaintiff's Requests for Production
12 of Documents to Defendants and Plaintiff's First Set of Special Interrogatories to Twitter; the
13 briefing schedule and hearing date on the Motions to Dismiss (Dkt. 38, 39, 41), and any response
14 to the Notice of Pendency of Other Actions (Dkt. 49), are stayed.

15 3. On or before November 4, 2022, the parties will meet and confer and notify the
16 Court of whether and how the parties intend to proceed with this action in light of the status and
17 disposition of the Twitter Delaware Action.

18 4. If the parties are unable to agree on whether and how to proceed with this action
19 in light of the status and disposition of the Twitter Delaware Action, the parties shall submit
20 competing proposals for the Court to consider, on or before November 4, 2022.

21 5. The Case Management Conference on February 3, 2023 (Dkt. 48) remains
22 unchanged.

1 Dated: October 10, 2022

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25 Dated: October 10, 2022

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*Attorneys for Defendants Elon Musk, X
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Dated: October 10, 2022

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Attorneys for Defendant Twitter, Inc.

SIGNATURE ATTESTATION

I, Tyson Redenbarger, am the ECF user whose identification and password are being used to file the foregoing Stipulation and [Proposed] Order to Stay Action. In compliance with Civil L.R. 5-1(i)(3), I hereby attest that concurrence in the filing of this document has been obtained.

Dated: October 10, 2022

By: /s/ Tyson Redenbarger
Tyson Redenbarger

* * *

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED

Dated: _____

By: _____

Hon. Charles R. Breyer
United State District Judge